

**IN RESPONSE TO THE OFFICE ACTION:**

**REMARKS REGARDING AMENDMENTS**

Independent claims 1, 37, and 73 have been amended so that the scope and language of the claim is clearer and more precise in defining what the Applicant considers to be the invention. No new matter has been added by the amendments. Support for the amended claims is found in the original specification.

**REJECTION UNDER 35 U.S.C. § 103(a):**

Claims 1–108 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Rudolph et al. (“Rudolph”) in view of Slezak et al. (“Slezak”) in view of U.S. patent no. 6,594,588 to Peden et al. (“Peden”). Assignee respectfully requests that the Examiner reconsider and withdraw the above rejection of the claims in view of above amendments and the following remarks.

The fundamental basis for an obviousness determination under 35 U.S.C. §103(a) was set forth by the Supreme Court in *Graham v. John Deere Co.*, 383 US 1; 148 U.S.P.Q. 459 (1966). In subsequent cases involving a determination of obviousness under 35 U.S.C. §103, the Federal Circuit has noted that the following basic tenets of patent law must be adhered to: 1) the claimed invention must be considered as a whole; 2) the references must be considered as a whole and must suggest the desirability and, thus, the obviousness of making the combination; 3) the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and 4) reasonable expectation of success is the standard with which obviousness is determined. *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 U.S.P.Q. 182, 187, n.5 (Fed. Cir. 1986) (emphasis added). All of the claim limitations must be taught in order to establish obviousness. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Independent claim 1 as amended requires limitations not taught, disclosed, or suggested by Rudolph, Slezak, and Peden. Claim 1 is directed to a method of collecting data about a plurality of samples that possess characteristics that change over time. The samples are arranged in a container spatial relationship and claim 1 requires displaying for user input a matrix of cells.

The cells of the matrix are configured in a spatial relationship to correspond to the spatial relationship of the samples in the container.

As recognized by the Examiner, Rudolph fails to disclose, suggest, or teach displaying a matrix. Peden also does not disclose, suggest, or teach a matrix. Slezak does disclose displaying a matrix as shown in Table II. However, the matrices disclosed by Slezak are limited to the output format of programs. Slezak fails to discuss displaying a matrix for user input and more importantly, Slezak does not disclose the use of a use of a matrix of cells configured in a spatial relationship that corresponds to the spatial relationship of samples in a container for the input of data. In fact, Slezak teaches that the data from the samples is automatically transmitted to its programs. Slezak does discuss user input of data, but user input only occurs if the automatic data input has failed. For at least these reasons, Assignee respectfully requests that the Examiner reconsider and withdraw the § 103(a) rejection of independent claim 1.

Claims 2–20 depend from independent claim 1 and thus, incorporate each limitation therein. Therefore, claims 2–20 are allowable for at least the same reason as independent claim 1. Assignee therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 2–20.

Independent claim 21 is directed to a method of scheduling data collection. Claim 21 requires storing a plurality of rules in a rule base; the rules determining whether a **characteristic** of a sample is to be collected. Further, claim 21 requires the application of the rules to a plurality of past values that are also stored in the rule base to identify target samples to collect data from. The application of the rules to the past values also identify at least one target characteristic to be collected from the identified target samples. Claim 21 also requires the generation of user instructions to collect the data.

The examiner asserts that Rudolph discloses rules such as assigning total fluorescence to digitonin killed cells, readings values at 0 time point and stopping reading at 24 hours. Assignee respectfully disagrees that these identified rules, if even rules at all, teach all of the claim limitations of claim 21. The “rules” identified by the Examiner do not meet the requirements of claim 21 nor does Rudolph disclose applying the rules as required. Instead, the rules appear to

dictate when a sample measurement is to be taken or assign a measurement to a particular type of sample (i.e. digitonin killed cells).

Rudolph does not disclose, teach, or suggest any rule that determines whether a characteristic of a sample is to be collected. This limitation is also not disclosed, taught, or suggested by Slezak or Peden. Rudolph also does not disclose, teach, or suggest that application of these identified “rules” to a plurality of past values to identify target samples or to identify at least one target characteristic to be collected from the identified target samples. Slezak and Peden both fail to disclose, teach, and suggest these limitations. Additionally, Rudolph does not disclose, teach, or suggest the generation of user instructions as required by claim 21. For at least these reasons, Assignee respectfully requests that the Examiner reconsider and withdraw the § 103(a) rejection of independent claim 21.

Claims 22–36 depend from independent claim 21 and thus, incorporate each limitation therein. Therefore, claims 22–36 are allowable for at least the same reason as independent claim 21. Assignee therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 22–36.

Independent claim 37 as amended requires limitations not taught, disclosed, or suggested by Rudolph, Slezak, and Peden. Claim 37 is directed to a system for collecting data about a plurality of samples that possess characteristics that change over time. Like claim 1, the samples are arranged in a container spatial relationship and claim 37 further requires means for displaying for user input a matrix of cells. The cells of the matrix must be configured in a spatial relationship to correspond to the spatial relationship of the samples in the container.

As recognized by the Examiner, Rudolph fails to disclose, suggest, or teach displaying a matrix. Peden also does not disclose, suggest, or teach a matrix. As discussed above, the matrices disclosed by Slezak are limited to the output format of programs and Slezak does not teach, disclose, or suggest means for displaying a matrix for user input. For at least these reasons, Assignee respectfully requests that the Examiner reconsider and withdraw the § 103(a) rejection of independent claim 37.

Claims 38–56 depend from independent claim 37 and thus, incorporate each limitation therein. Therefore, claims 38–56 are allowable for at least the same reason as independent claim

37. Assignee therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 38–56.

Independent claim 57 is directed to a system for scheduling data collection. Claim 57 requires means for storing a plurality of rules in a rule base; the rules determining whether a **characteristic** of a sample is to be collected. Further, claim 57 requires means for applying the rules to a plurality of past values to identify target samples to collect data from. The means for applying the rules to the past values also identify at least one target characteristic to be collected from the identified target samples. Claim 57 also requires means for generating of user instructions to collect data.

As discussed above, the Assignee respectfully disagrees that these identified rules, if even rules at all, teach all of the claim limitations of claim 57. The “rules” identified by the Examiner do not meet the requirements of claim 57 nor does Rudolph disclose means for applying the rules as required. Rudolph does not disclose, teach, or suggest any rule that determines whether a characteristic of a sample is to be collected. Rudolph also does not disclose, teach, or suggest that means for applying the identified “rules” to a plurality of past values to identify target samples or to identify at least one target characteristic to be collected from the identified target samples. Additionally, Rudolph does not disclose, teach, or suggest the means for generating user instructions as required by claim 57. As previously discussed, Slezak and Peden do not disclose, teach, and suggest these limitations. For at least these reasons, Assignee respectfully requests that the Examiner reconsider and withdraw the § 103(a) rejection of independent claim 57.

Claims 58–72 depend from independent claim 57 and thus, incorporate each limitation therein. Therefore, claims 58–72 are allowable for at least the same reason as independent claim 57. Assignee therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 58–72.

Independent claim 73 as amended requires limitations not taught, disclosed, or suggested by Rudolph, Slezak, and Peden. Claim 73 is directed to a computer program product that collects data about a plurality of samples that possess characteristics that change over time. Like claims 1 and 37, the samples are arranged in a container spatial relationship. Claim 73 further

requires a computer-readable program that is configured to display for user input a matrix of cells. The cells of the matrix must be configured in a spatial relationship to correspond to the spatial relationship of the samples in the container.

As recognized by the Examiner, Rudolph fails to disclose, suggest, or teach displaying a matrix. Peden also does not disclose, suggest, or teach a matrix. As discussed above, the matrices disclosed by Slezak are limited to the output format of programs and Slezak does not teach, disclose, or suggest means for displaying a matrix for user input. For at least these reasons, Assignee respectfully requests that the Examiner reconsider and withdraw the § 103(a) rejection of independent claim 73.

Claims 74–92 depend from independent claim 73 and thus, incorporate each limitation therein. Therefore, claims 74–92 are allowable for at least the same reason as independent claim 73. Assignee therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 74–92.

Independent claim 93 is directed to a computer program product that schedules data collection. Claim 93 requires a computer-readable program code that is configured to store a plurality of rules in a rule base; the rules determining whether a **characteristic** of a sample is to be collected. Further, claim 93 requires computer-readable program code that is configured to apply the rules to a plurality of past values to identify target samples to collect data from. The computer-readable program code is also configured to apply the rules to the past values to identify at least one target characteristic to be collected from the identified target samples. The computer-readable program code of Claim 93 is also configured to generate user instructions to collect data.

For the reasons as discussed above, the Assignee respectfully disagrees that the identified “rules,” if even rules at all, teach all of the claim limitations of claim 93. Rudolph does not disclose, teach, or suggest any rule that determines whether a characteristic of a sample is to be collected. Rudolph also does not disclose, teach, or suggest that application of these identified “rules” to a plurality of past values to identify target samples or to identify at least one target characteristic to be collected from the identified target samples. Additionally, Rudolph does not disclose, teach, or suggest the generation of use instructions as required by claim 93. As

discussed above, Slezak and Peden fail to disclose, teach, or suggest these limitations. For at least these reasons, Assignee respectfully requests that the Examiner reconsider and withdraw the § 103(a) rejection of independent claim 93.

Claims 94–108 depend from independent claim 93 and thus, incorporate each limitation therein. Therefore, claims 94–108 are allowable for at least the same reason as independent claim 93. Assignee therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 94–108.

Assignee respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1–108 and that the Examiner indicate the allowance of all pending claims in the next paper from the Office. The Examiner is invited to contact the undersigned attorney at 713.787.1697 with any questions, comments, or suggestions relating to the referenced patent application.

Respectfully submitted,



Rexford A. Johnson  
Reg. No. 57664  
Attorney for Assignee  
MONSANTO COMPANY

Customer No. 45607  
HOWREY LLP  
1111 Louisiana, 25<sup>th</sup> Floor  
Houston, TX 77002

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